**PETALING RUBBER ESTATE LTD. & ANOR.**

**v.**

**NADARAJAH SELLAPPAN & ORS.**

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
HASHIM YEOP SANI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 346 OF 1986]
8 AUGUST 1987

***LABOUR LAW:*** *Employment - Wages - Whether 'Special Relief Allowance' is part of wages - Remuneration - Contract of employment - Whether payment for work done is same as payment upon completion of full day's work.*

The sole question in this appeal was whether the special relief allowance (SRA) is part of wages within the meaning of s. 2 of the Employment Act 1955 ("the Act").

The subject of this appeal arose out of claim before the Director-General of Labour under s. 69(1) of the Act by 565 members of the NUPW who were employees of the appellants.

The claim was over the difference in overtime wages payable to the employees since they contended that the SRA paid to them was included as part of wages for the purposes of calculating the ordinary rate of pay, that is the rate on which calculation of overtime payments should be made.

On the other hand, the employers maintained that the SRA was a voluntary payment and not part of wages. The total amount of claim of all the 565 employees amounted only to RM11,748.32:

The learned Judge held the SRA as wages as defined in s. 2 of the Act. Hence this appeal by the employers.

**Held:**

**[1]** The SRA in its original concept was meant to be temporary to tide over the difficult times and subject to review from time to time. Logically therefore SRA should never be taken to be part of wages.

**[2]** In its true and original concept the SRA is a temporary allowance payable over and above the wages of the employees. Unless the parties have agreed that the SRA should be incorporated as part of wages, the SRA must be regarded according to its original concept and character, i.e. payable over and above wages.

**[3]** Section 2 of the Act states that "wages" means all remuneration which is payable for work done in respect of the contract of employment of service but does not include the specified years of remuneration. Remuneration payable for work done is not the same as remuneration payable upon completion of a full day's work.

**[4]** In the instant case, the evidence shows that the SRA is payable not for work done but payable only after a normal day's work has been completed by the employee.

*[Appeal allowed with costs. Deposit to be refunded to appellants.]*

**Cases referred to:**
*Asia Motor Co. (K. L.) Sdn. Bhd. v. Ram [1985] 2 MLJ 202*
*Metal Box Malaysia Bhd. v. Metal Industry Employees Union [1982] MLLR 210*
*S & U Stores Ltd v. Lee [1969] 1 WLR 626*

**Legislation referred to:**
Employment Act 1955 (Act 266), ss. 2, 69, 69(1), 77(1)

*For the appellants - V.T. Nathan (L. K. Peh with him); M/s. Shearn Delamore & Co.*
*For the respondents - B. Lobo; M/s. Lobo & Associates*

**JUDGMENT**

**Hashim Yeop Sani SCJ:**

The appeal before the learned Judge of the High Court (Harun J) was under s. 77(1) of the Employment Act 1955 (Act 265) against the decision of the Director-General of Labour under s. 69 of the Act. The sole question before the learned Judge then and also before this Court now is whether the Special Relief Allowance (SRA) is part of wages within the meaning of s. 2 of the said Act.

To get a clear perspective of the problem some understanding of the background history of SRA is necessary. On 20 October 1973 the late Prime Minister (Tun Abdul Razak) issued a statement of policy that in order to alleviate the financial difficulties due to rising costs of essential commodities being experienced by government employees a special relief allowance (SRA) would be granted to all federal and state government employees, members of the armed forces and police, employees of public agencies and statutory bodies, receiving salaries of RM500 per month and below as well as pensioners (p. 92 of appeal record). The policy was in fact implemented from 1 October of that year. The late Prime Minister emphasised in the same policy statement that the SRA was temporary and not subject to income tax or EPF contribution. The same policy statement also expressed the hope that employers in the private sector would likewise provide the same facilities for their employees in view of the high cost of essential commodities. Many employers responded to the call of the late Prime Minister. But we are now concerned only with the payment of SRA to plantation workers.

The subject of this appeal arose out of claim before the Director-General of Labour under s. 69(1) of the Employment Act by 565 members of the national union of plantation workers who were employees of the appellants. The claim was over the difference in overtime wages payable to the employees since they contended that SRA paid to the them was included as part of wages for the purposes of calculating the ordinary rate of pay, that is, the rate on which calculation of overtime payments should be made. The employers on the other hand maintained that SRA was a voluntary payment and not part of wages. The total amount of claim of all the 565 employees amounted only to RM11,748.32.

It is common ground that none of the collective agreements entered into between the parties in 1976, 1977, 1979 and 1982 incorporated the payment of SRA. There is evidence however that about six months before the late Prime Minister made the policy statement on SRA, the union had called on the Malayan agricultural producers association (MAPA) for an increase in the cost of living allowance due to the increased costs of living. MAPA rejected the claim. After the announcement by the late Prime Minister the union renewed its demand for the payment of some allowance due to increased costs of living and requested the employers to

comply with the request of the government. A proposal by MAPA was contained in a letter dated 22 November 1973 (p. 99 in appeal record) which however was not agreed to as regards the quantum. This is seen in the union's letter dated 23 November 1973 (p. 102 in appeal record). MAPA then proposed a new rate in its letter dated 31 December 1973 (p. 106 in appeal record). Then there was a threat of industrial action by the union (p. 108 in appeal record). A meeting was held between the parties on 4 January 1974 and a rate was finally agreed on and that SRA was to be paid only for a full day's work done. This was the rate contained in MAPA's letter dated 9 January 1974 (p. 110 in appeal record) which gave "normal day worked" as the basis for payment of SRA. The union accepted the new rate although it asked for an explanation of the meaning of the words "normal day worked" in their letter dated 10 January 1974 (p. 114 in appeal record). In MAPA's letter dated 16 March 1974 (p. 124 in appeal record) they reiterated that SRA was paid as an "*ex gratia* payment" and was paid "to relieve hardship."

It can be gathered from the events therefore that the employers were willing to pay SRA to the employees but the protracted negotiation was on the rate and when the final rate was agreed on, the basis of "normal day worked" was incorporated by the employer. The Director-General of Labour was therefore not correct in his grounds of judgment when he said that "the element of voluntariness and the purpose of helping the employee in view of the high cost of living are missing" (p. 21 in appeal record). As reiterated in the Labour department's letter dated 9 February 1974 the character of SRA to be paid by the employers was no different from the character of SRA intended by the late Prime Minister, that is to say, an *ex gratia* payment paid over and above the wages of the employees in order to relieve hardship due to increasing costs of essential commodities.

SRA in its original concept was meant to be temporary to tide over the difficult times and subject to review from time to time. Logically therefore SRA should never be taken to be part of wages. That is why in *Asia Motor Co. (K. L.) Sdn. Bhd. v. Ram* [1985] 2 MLJ 202 although the Federal Court was considering the definitiion of "remuneration" in the Wages Council Act 1947 and the Wages Regulations (Shop Assistant) Order 1970 the learned Lord President made a general comment on SRA when he said it is a "matter of common sense and general practice" that such payment should be treated as separate or distinct from wages or remuneration.

The next question is, is it correct that SRA is in any case caught under the definition of "wages" under the Employment Act 1955? Section 2 of the Act says that "wages" means all remuneration which is payable for work done in respect of the contract of employment but does not include several types of remuneration specified in the definition. The learned Judge in the instant case followed his own decisions in certain industrial Court cases which he had heard as president of the industrial Court where he held that the definition of "wages" in the ACT cast the net far and wide, and that according to him the law says you take everything you find except certain specific items which have been excluded by the definition - *Metal Box Malaysia Bhd. v. Metal Industry Employees Union* [1982] MLLR 210. He was also probably influenced by *S & U Stores Ltd. v. Lee* [1969] I WLR 626 where the word "remuneration" was held not only to mean mere payment for work done but what the doer expected to get as a result of the work he did insofar as what he expected to get was quantified in terms of money. But in *S & U Stores Ltd.* the claim was under the U.K. Redundancy Payments Act 1965 where an employee who had the use of a motorcar for the proper

performance of his duties received under the contract of employment weekly payments which included a specified sum described as "for expenses in connection with the use of his own motorcar". The ruling therefore was based on quite different set of facts.

But there is another aspect of the decision of the learned Judge. He would also seem to regard SRA as a payment for **work done** and therefore came well within the meaning of "wages" in the Employment Act. In his note in the instant case (following his previous findings) the learned Judge recorded the following:

> SRA paid since 1 October 1973 - by whatever term used it is wages as defined in s. 2 of the E. A. - for work done." (p. 34 of appeal record).

In our view this is where the misconception started. It must be pointed out that what is payable as wages under the Act is not "all remuneration" but **all remuneration for work done in respect of his contract of service** excluding the specified types of remuneration. In the instant case MAPA's letter dated 9 January 1974 specified the terms of SRA as follows:

> **(1) Special Relief Allowance (SRA)**
>
> With effect from the 1 October 1973, all plantation workers will be paid a temporary allowance as under:
>
> (a) **Workers whose total earnings for the month do not exceed RM300**
>
> | | | |
> |---|---|---|
> | Monthly-rated workers | ... | RM30 p.m. |
> | Daily-rated & piece-rated Workers | ... | RM1.15 cts per normal day worked. |
>
> (b) **Workers whose earnings for the month are between RM301 and RM400**
>
> | | | |
> |---|---|---|
> | Monthly-rated workers | ... | RM20 p.m. |
> | Daily-rated & piece-rated workers | ... | 75 cts per normal day worked. |
>
> (c) **Workers whose earnings for the month are between RM401 and RM500**
>
> | | | |
> |---|---|---|
> | Monthly-rated workers | ... | RM15 p.m. |
> | Daily-rated & piece-rated workers | ... | 60 cts per normal day worked. |

The words "per normal day worked" are not the same as "for work done". Remuneration payable for work done is not the same as remuneration payable upon completion of a full day's work. This was the basic misconception which converted an allowance clearly intended to be temporary only and payable over and above wages into remuneration incorporated as part of wages. It is clear that it was a rate fixed by MAPA that SRA would be payable only if the employee has completed a normal day's work for which he is remunerated according to his contract of employment.

Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded

as part of wages. In other words unless the parties agree that SRA should be incorporated as part of wages SRA must be regarded according to its original concept and character i.e. payable over and above wages. In the instant case the evidence shows that it is payable not for work done but payable only after a normal day's work has been completed by the employee.

We would therefore allow the appeal with costs to the appellants. Deposit to be refunded to appellants.

Also found at [1987] 2 CLJ 296